IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No. 2593 of 2004

PETITIONER: Sahu Timber Trading Company, Through its authorized power of attorney holder, Pendra, Tehsil: Pendra Road, District: Bilaspur, Chhattisgarh.

P. R. No. 25918/04
Presented by Shri Pankaj Vaidya
Noted 16.8.04

- Versus -

RESPONDENTS:

1. State Govt. of Chhattisgarh, Through: Secretary, Ministry of Forest, Mantralaya, D.K.S. Building, Raipur, Chhattisgarh.

2. Conservator of Forests-cum-Prescribed Appellate Authority under Section 11 of the Chhattisgarh Kastha Chiran (Viniyaman) Adhiniyam, 1984, Bilaspur, Chhattisgarh.

3. Divisional Forest Officer, Marwahi Forest Division, Pendra Road, District: Bilaspur, Chhattisgarh.

RECEIVED COPY 16/8/04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF SUITABLE WRIT, WRITS, DIRECTION ETC. TO DO

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.2593 of 2004

Sahu Timber Trading Company

- Versus -

State of Chhattisgarh and others

O R D E R

Post for: 04-1-2005

Sd/-
L.C. Bhadoo
Judge
6/1-1-2005

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2593 of 2004

Sahu Timber Trading Company

- Versus -

State of Chhattisgarh and others

Present: -

Mr. Sanjay K. Agrawal, Advocate: For the petitioner.

Mr. Sumesh Bajaj, Dy. Govt. Advocate: For the respondents.

O R D E R

(Passed on 4th January, 2005)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, proprietary and correctness of the order dated 7.2.2004 (Annexure P-11) passed by respondent No.3- Divisional Forest Officer and also order dated 14.7.2004 (Annexure P-13) passed by respondent No.2- Conservator of Forest in appeal as Appellate Authority.

2. Brief facts leading to filing of this writ petition are that in the year 1986 the petitioner was permitted to set up a saw mill machine at Pendra. On 21.02.2003, 12.12.2003 & 13.12.2003 the authorized Range Officers of Gorilla & Pendras inspected the petitioner-Saw Mill. As per the allegations, on inspection of the saw mill by these officers on 21.2.2003 239 pieces of Beeja slippers & 45 pieces of

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Kamhar slippers were found, on 13.12.2003 forty green slippers of Mango, Jamun, & Karhi-Kathal trees & 514 green pieces of mixed tree logs were found and the Beeja slippers which were lying in the petitioner Saw Mill were found to be of Coupe–V Pidha area, the numbers recorded by the forest department were present on these slippers, the Kamhar logs were stolen from the forest area & brought to the petitioner Mill illegally and were sawn there. On this Crime Nos.801/25 & 814/01 dated 31.12.2003 were registered and on enquiry it was found that Beeza & Kamhar logs were stolen from the forest area, whereas other pieces of wood i.e. Mango, Jamun & Karhi-Kathal were brought from the private persons, which were cut illegally. After preliminary enquiry, a report was submitted to respondent No.3-Divisional Forest Officer, who in turn issued show cause notice on 31.12.2003 and again on 15.1.2004 to the petitioner and asked him to explain as to why license of petitioner should not be cancelled/suspended.

3. Reply of the same was submitted by the petitioner vide Annexure P-4 in which it was stated that Beeza & Kamhar logs were purchased by them on 19.6.2002, 18.10.02, 19.12.2002 & 12.9.2001 in the auction by the Forest Department and other woods i.e. Jamun, Mango & Karhi-kathal were brought to their saw mill by the farmers with the permission of the respective Sarpanchas for the purpose of sawing. However, dissatisfied with the reply filed by the petitioner and based on the preliminary enquiry report and other documents, respondent No.3 reached to the conclusion that Beeza & Khamar tree logs were stolen from the forest area, same being fresh and green, whereas the papers

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produced by the petitioner regarding purchase were of the year 2002, other tree logs were cut without permission and transported illegally by the private persons to the petitioner. Accordingly, the petitioner was held guilty under Sections 8 & 9 of C.G. Kastha Chiran (Vininiyam) Adhiniyam, 1984 (hereinafter shall be referred as to 'the Adhiniyam of 1984') and an order was passed for suspension of license of petitioner-Saw Mill w.e.f. 01.01.2004 to 31.12.2004, fine of Rs.5,000/- under Section 9 of the Adhiniyam of 1984 was imposed. Similarly, seized woods were also confiscated to the Government account. Being aggrieved by this order the petitioner-Mill filed an appeal before the Appellate Authority-respondent No.2, which also came to be dismissed by the Appellate Authority vide order-dated 14.7.2004 (Annexure P-13).

4. The petitioner's case, as born-out from the records, is that no proper opportunity of hearing was given to the petitioner, copies of documents were not served, even notice for commission of violation of Section 8 of the Adhiniyam of 1984 was not given and petitioner Mill was held guilty of the same. Similarly, when the compromise application of the petitioner (Annexure P-14) was accepted by respondent No.3 then he ought not to have suspended the license of the petitioner Mill. The order was passed without considering the documents submitted by the petitioner.

5. Learned counsel for the petitioner while arguing raised same points that no proper opportunity was given to the petitioner, no notice for violation of Section 8 was given and even in the show cause notice it was not mentioned that the petitioner Mill failed to furnish the returns in times, therefore, respondent No.3 was not

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entitled to hold guilty petitioner-Mill for violation of Section 8 of the Adhiniyam of 1984. Learned counsel further submits that when the compromise application (Annexure P-4) filed by petitioner was accepted, fine was imposed then respondent No.3 was not authorized to suspend the license of the petitioner Mill and also to confiscate the woods taken from the possession of the petitioner Mill. Moreover, in view of the fact that Beeza & Kamhar woods were purchased by the petitioner in auction by the Forest Department, documents to that effect were furnished by the petitioner and that other woods were of the private persons which were brought to the petitioner Saw Mill under the permit issued by the concerned Sarpanchas. Learned counsel for the petitioner relied upon the decision of M.P. High Court in the matter of **Dwarika Prasad Roy Vs. State of M.P. and others** reported in **2003 (1) MPLJ 471**.

6. On the other hand, Shri Sumesh Bajaj, Deputy Government Advocate argued that on the basis of the documentary evidence, statement of witnesses, inspection report, seizure and Panchnama, it was found that Beeza and Kamhar woods were fresh and green & same were stolen from the Government forest, whereas the documents produced by the petitioner regarding purchase were of the year 2002. He further argued that on Beeza slippers marking of forest department were present, same was stolen by one Ramesh Kumar from the forest area and other woods found in the petitioner-Saw Mill were illegally cut and brought by the villagers in violation of Section 240 of the C.G. Land Revenue Code, 1959 & C.G. Adim Jan Jation Ka Sanrakshan Adhiniyam, 1999 & Niyam 2000. Learned State

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counsel further submits that as far as the supply of copies of the documents was concerned, at no point of time the petitioner requested for supply of copies of documents, therefore, it cannot be said that the principle of natural justice was violated. He further submitted that since the show cause notice was served upon the petitioner, reply of the same was filed and they never asked for copy of any document, as such principle of natural justice was not violated in this case. He further submitted that as per provisions of Section 6 (5) as also provisions of Section 12 (2) of the Adhiniyam of 1984 license of the petitioner Mill was rightly suspended, fine was imposed and wood was confiscated.

7. In this connection, if we look into the provisions of clauses (b) & (c) of sub-section (5) of Section 6 of the Adhiniyam of 1984 which envisages that if the licensee failed to comply with the conditions of license or contravenes any provisions of the Act or Rules made therein and if the licensee is not able to account for satisfactorily the wood which was found in the saw mill then wood is liable to be confiscated under Section 9. It further envisages that Licensing Officer after giving the licensee an opportunity of showing cause can revoke or suspend the license and forfeit the sum. Section 8 envisages regarding submissions of returns in the prescribed form by the licensee relating to the business of the saw-mill. Section 9 envisages that when saw-mill owner fails to account for satisfactorily about the wood found in the saw mill at the time of inspection, same shall be liable to be confiscation. Section 12 (2) envisages that no order of confiscating any property shall be made under sub-section (1) unless the persons from whom the property is seized and in the case the owner of such

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property is known, such person is given; (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property. (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation and (c) a reasonable opportunity of being heard is given in the matter. Therefore, as per provisions of sub-section (2) of Section 12, Section 9 and clauses (b) & (c) of sub-section (5) of Section 6 of the Adhiniyam of 1984 before passing the order of confiscation of woods and imposing penalty the petitioner was entitled for a show cause notice, reasonable opportunity of hearing and representation, so as to enable the petitioner to account for satisfactorily about the presence of the woods in the saw mill.

8. The Constitution Bench of the Hon'ble Apex Court in the matter of **Fazal Bhai Dhala Vs. Custodian General Evacuee Property, New Delhi and another** reported in **AIR 1961 SC 1397** while explaining the reasonable opportunity held that *"where law requires that the person concerned should be given a reasonable opportunity of being heard before any order prejudicial to him is made and if this reasonable opportunity of being heard cannot be given without the service of notice, the omission to serve the notice would be fatal; where, however, hearing can be given without service of notice, it does not matter at all, and all that has to be seen is whether even though no notice was given a reasonable opportunity of being heard was given"*. In another decision in the matter of **M/s Bharat Barrel and Drum Mfg. Co. V. L.K. Bose and others** reported in **AIR 1967 SC 361,** the Court while explaining the principle of natural justice held that *"while*

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considering the question, court should not proceed as if there are any inflexible rules of natural justice of universal application. Court has to consider in each case whether in light of facts and circumstances of case, nature of issues involved in enquiry, nature of order passed and interest affected thereby, a fair and reasonable opportunity of being heard was furnished".

9. In the matter of **K.L. Tripathi V. State Bank of India and others** reported in **AIR 1984 Supreme Court 273** the Hon'ble Apex Court held that:

> *"....principles of natural justice has been violated or not has to be judged in the background of nature of charges, the nature of investigation conducted in the background of any statutory or relevant rules governing such enquiries.* ***The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any between the parties. It is true that all the actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether the principle of natural justice would be applicable to a particular situation or the question whether there has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. The rules of natural justice are flexible and cannot be put in any rigid formula..****"*
>
> (Emphasis supplied)

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The M.P. High Court in the case of Dwarika Prasad Roy (supra) while dealing with Sections 6(5) &12(2) of the Adhiniyam of 1984 held that *"in order to enable a person to defend himself properly it is necessary the material on the basis of which opinion has been formed should also be supplied. That having not been done and when such material had been relied upon by the Licensing Authority without affording copy of the same to the petitioner, the order per se was illegal. The Licensing Authority acted upon the material collected by the Range Officer without supplying copy of the same to the petitioner. Therefore, the petitioner was deprived of opportunity to defend properly."*

10. In the light of above principles laid down by the Hon'ble Apex Court and High Court of M.P. in the above matters, if we look into the provisions of sub-section (2) of Section 12 which envisages that *'a notice informing the grounds on which the confiscation of property is proposed; an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation and a reasonable opportunity of being heard in the matter and he should also have the opportunity to account for satisfactorily the presence of the wood.'* In view of above provisions and Sections 6 (5) (c) & 9 of the Adhiniyam of 1984, if we look into the facts of present case, the Range Officers of Gorilla & Pendra inspected the petitioner-Saw Mill, prepared their report, sent the same to respondent No.3- Divisional Forest Officer through the Sub Divisional Officer (Forest) and respondent No.3-Divisional Forest Officer based on the preliminary enquiry report, documents available, seizure memo, Panchnama and statement of witnesses passed the

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impugned order. But, it is an admitted fact that copies of these documents were not given to the petitioner for making representation against the show cause notice. Even the show cause notice about the non-filing of the returns as per provisions of Section 8 was not given, only the notice was given regarding violation of Section 9, in which it was mentioned that woods were found in the Saw Mill in violation of Section 9 of the Adhiniyam of 1984. Looking to the facts and circumstances of the case, this notice cannot be considered as sufficient compliance of provisions of sub-section (2) of Section 12 and clauses (b) & (c) of sub-section (5) of Section 6. In this case, it is an admitted position that the witnesses were examined in the absence of the petitioner and on the basis of that it was held that Beeza & Kamhar slippers were stolen by one Ramesh Kumar and same were brought to the petitioner Mill. Even, as mentioned in the return of the respondents, other documents (Annexure R-7), photographs (Annexure R-8), statements of laborers (Annexure R-9) and comparative chart (Annexure R-10) were prepared by the Range Officers, but even the copy of enquiry report was not supplied to the petitioner. Therefore, in order to give reasonable and proper opportunity of replying the show cause notice and also of hearing, respondent No.3 before passing the impugned order dated 7.2.2004 ought to have furnished the copies of all those documents to the petitioner along with show cause notice and show cause notice must have drafted giving details of allegations against the petitioner. It appears from the record that no request was made by the petitioner to furnishing the copies of documents, but looking to the provisions of sub-section (2) of Section 12 & clause (c) of sub-section (5) of Section 6 of Adhiniyam of 1984 in

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order to afford reasonable opportunity of hearing to the petitioner and also to enable him to give proper & detailed reply and defend himself properly, the necessary material based on which opinion was formed by the Divisional Forest Officer (respondent No.3), ought to have been supplied to the petitioner, without which looking to the above provisions, it cannot be termed that proper opportunity was given to the petitioner before passing the order of confiscation and suspension of license of the petitioner Mill, as both the actions i.e. confiscation of woods and suspension of license are of serious consequences which affects the business of the petitioner. Therefore, respondent No.3, before passing the impugned order, ought to have supplied the copies of the documents, which were the basis of formation of opinion. Moreover, the order was passed by respondent No.3 on the preliminary enquiry conducted by the Range Officers. Even in the memo of appeal the petitioner mentioned this fact that enquiry was made in his absence and copies of the documents were not served on the petitioner. Therefore, I am of the considered opinion that in the present case without making compliance of the above provisions principles of natural justice have been violated, as such the orders impugned are liable to be quashed on this score alone.

11. During the course of the arguments it was argued that the petitioner-Mill moved a compromise application (Annexure P-4). In the first instance, perusal of impugned order reveals that said compromise application has not been made basis for passing the impugned orders. Moreover, this compromise application said to have been moved on behalf of the petitioner-Mill is not signed,

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therefore, while passing the impugned orders this could not have been made basis.

12. In the result, the petition of the petitioner is allowed, the impugned orders dated 7.2.2004 & 14.7.2004 (Annexure P-11 & P-13) are quashed and the matter is remanded back to the Licensing Authority, who shall proceed the case afresh in accordance with law within a period of four months. Licensing Authority to give a fresh notice to the petitioner Saw Mill incorporating all the allegations against the petitioner Mill along with all the documents basing the said show cause notice and after hearing the petitioner in the matter pass the order in accordance with law.

Sd/-
L.C. Bhadoo
Judge

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